

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MANUEL JIMINEZ-VALDEZ,

Plaintiff,

Case No. 21-13046
Honorable Linda V. Parker

v.

TORIANO HUDSON and
BEVERLY WALTON,

Defendants.

_____ /

ORDER

This matter is before the Court on *pro se* Plaintiff Manuel Jiminez-Valdez (“Plaintiff”)’s “objection” to Magistrate Judge Curtis Ivy’s Report and Recommendation (“R&R”) (ECF No. 52), recommending the Court grant Defendants’ motion to dismiss and for summary judgment. (ECF Nos. 35, 43). The R&R directed the parties to file any objections within 14 days of service as provided for in Federal Rule of Civil Procedure 72(b)(2) and Eastern District of Michigan Local Rule 72.1(d). (ECF No. 52 at PageID. 331.)

The R&R was filed on January 30, 2024. (ECF No. 52.) As Plaintiff was served through the mail and therefore receives three additional days to act, the deadline for him to object to the R&R was February 16, 2024. *See* Fed. R. Civ. P. 6(d). Plaintiff failed to file objections by that deadline.

On March 6, 2024, the Court issued an opinion and order adopting the R&R and entered a judgment. (ECF Nos. 53, 54.) Copies of the Court’s decision and judgment were mailed to Plaintiff on March 6, 2024. (*See* Mar. 6, 2024 Text-Only Order.) On March 15, 2024, 45 days after the R&R was issued, Plaintiff filed his objections. (ECF No. 55.) Plaintiff’s objections are therefore untimely. “A party that does not timely object to a report and recommendation waives any further right of appeal.” *Hollister v. Warren*, No. 06-14202, 2010 WL 2756538, at *1 (E.D. Mich. July 12, 2010) (citing *Smith v. Detroit Fed’n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987)).

Moreover, Plaintiff does not identify any defect in Magistrate Judge Ivy’s R&R in his objections. Instead, Plaintiff simply reiterates that he is suing Defendants under 42 U.S.C. § 1983 for a violation of his Eighth Amendment rights, “seeks reasonable extensions for time restraints” because Spanish is his primary language and the case and legal system are complex, and “renews” his request for the appointment of counsel. (*See* ECF No. 55.)

Magistrate Judge Ivy understood that Plaintiff was claiming cruel and unusual punishment in violation of the Eighth Amendment and properly analyzed that claim in the R&R. Plaintiff did not seek an extension of time to file objections to the R&R before the Court adopted it. He fails to establish excusable neglect for failing to timely file his objections, *see* Fed. R. Civ. P. 6(b)(1)(B), and does meet

the standard to set aside the decision under Rule 59(e) or 60(b) of the Federal Rules of Civil Procedure. While Plaintiff indicates that Spanish is his primary language, his filings reflect that he has been able to receive assistance—except for a period when he was in segregation—to understand the proceedings and prepare documents in English for submission. Notably, Plaintiff was granted extensions of time to respond to Defendants’ dispositive motion (*see* ECF Nos. 46, 48), but he still failed to file a response even after Magistrate Judge Ivy issued a show cause order requiring him to do so. Lastly, Plaintiff did not previously file a motion seeking the appointment of counsel in this case. There is no right to the appointment of counsel in these proceedings and counsel “is justified only by exceptional circumstances.” *See Bennett v. Smith*, 110 F. App’x 633, 635 (6th Cir. 2004) (citation omitted). Plaintiff fails to identify such exceptional circumstances, and his request comes too late.

For these reasons, the Court rejects Plaintiff’s “objection” to the R&R.

SO ORDERED.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: May 28, 2024

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, May 28, 2024, by electronic and/or U.S. First Class mail.

s/Aaron Flanigan

Case Manager